

**BOARD OF REGENTS
BRIEFING PAPER**

Agenda Item Title: Proposed Amendments to the Board of Regents Code, Title 2 to Adopt a Model Code of Student Conduct and related Amendments to Title 4.

Meeting Date: Feb. 28-Mar. 1, 2013

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

As part of its review of the Board of Regents Code, the Code Review Task Force has recommended that a separate Model Code of Student Conduct should be adopted for use by those institutions which have not adopted their own Student Conduct Code. Under current policy, student and employee misconduct matters follow the same procedures set

- The proposal preserves existing prohibitions and due process.
- Separation of student and employee disciplinary matters into separate chapters will make both processes easier to understand and follow for those institutions that do have their own student conduct code.
- The notice provision of Title 2, Ch. 6, Sec. 6.9.3.b should be changed to allow service by first class mail and electronic (if an e-mail address is available), or by hand-delivery.

5. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- The current policy and the procedure Chapter 6 are adequate and institutions may adopt their own student conduct codes.
- There is no need for a separate code of student conduct.

6. ALTERNATIVE(S) TO WHAT IS BEING REQUESTER-1())6(TO)s.

TITLE 2 – Nevada System of Higher Education CODE

*RULES OF CONDUCT AND PROCEDURES FOR STUDENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION*

New Chapter 10, and related revisions to Chapter 6 and other Handbook sections

Additions appear in boldface italics, deletions are ~~stricken~~ and bracketed]

TITLE 2 – Nevada System of Higher Education CODE

CHAPTER 10

RULES OF CONDUCT AND PROCEDURES FOR STUDENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION

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TITLE 2 - Nevada System of Higher Education ~~CODE~~
CHAPTER 10
RULES OF CONDUCT AND PROCEDURES FOR
STUDENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

Section 10.1 Scope of the Chapter

10.1.1 Applicability of Procedures and Sanctions. The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against students of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education rules of conduct or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions. Except as otherwise provided in this chapter, the System institutions and professional schools may establish written policies, procedures and sanctions for the discipline of its students that may be used in lieu of the policies, procedures and sanctions of this chapter, including but not limited to the establishment of student judicial councils, subject to the prior review by the institution's general counsel and to the approval of the president of the institution.

10.1.2 Proceedings Concurrent. Action under the procedures established by this chapter shall go forward regardless of other possible or pending administrative civil or criminal proceedings arising out of the same or other events.

10.1.3 Student defined. The term "student" means any person who is or was enrolled in courses, either fulltime or part1(,)2(in)-2(c)6(l)10(u)-2(l)-2(go f)3(or)-1(ws)-1(Ne)3(a).

10.1.6 Charged student. The term, "charged student," means the student alleged to have violated the rules of conduct.

Section 10.2 Cause

10.2.1 Prohibited Conduct. The following conduct is prohibited

(a) Acts of dishonesty, including but not limited to the following:

(1) Cheating, plagiarism, fraudulently obtaining grades, falsifying research data or results, assisting others to do the same, or other forms of academic or research dishonesty;

(2) Furnishing false information to any institution or System official, faculty member, or office;

(3) Forgery, alteration, misuse, theft, or using without permission, any institutional document, or record.

(b) Disorderly, lewd or indecent conduct, including the disruption, obstruction, or unauthorized interruption of teaching, convocations, recruiting interviews, social events, research, meetings, business and administration, disciplinary proceedings, or other institutional or System activities, including public service functions and outreach activities on or off campus, or other activities when the conduct occurs on institutional premises.

(c) Conduct that endangers the health or safety of any member or guest of the System community.

(d) Physical abuse, verbal abuse, threats, intimidation, coercion, and/or conduct that threatens or endangers the health or safety of any person.

(e) Interference by force, threat or duress with the lawful freedom of movement of persons or vehicles on institutional premise.

(f) Resisting or obstructing institutional or other public officials in the performance of their duties.

(g) Failure to comply with the directions of institutional officials acting in accordance with their duties and/or failure to identify oneself to these persons when requested to do so.

(h) Acts of physical force or disruptive acts which interfere with institutional activities, freedom of movement on the campuses, freedom for students to pursue their studies, freedom of speech, freedom to be heard, and freedom to pursue research of their own choosing.

(q) Willfully destroying, damaging, tampering, altering, stealing, misappropriating or using without permission any System, program or file of the System.

(r) Violation of the institution's policies and regulations governing residence in institution owned or controlled property, and access to and use of all institutional facilities, including responsibility for the conduct of guests.

(s) Use, possession, or distribution of alcoholic beverages without authorization (except as expressly permitted by System or Institutional regulations, such as WKH Š\$OFRKROLF %HYHUDJH 3ROLF\ RU SXEOLF L C) may not, in any circumstances, be used by, possessed by, or provided to, any person under twentyone years of age.

(t) Use, possession, manufacturing or distribution of marijuana, heroin, narcotics, or other controlled substances, use or possession of any illegal and/or unauthorized drugs, prescription drugs, and drug paraphernalia or being under the influence of illegal drugs except as expressly permitted by law.

(u) Contempt of student disciplinary proceedings including impairing or interrupting any proceeding or providing false information to institution or System officials and student hearing board members during the course of the conduct resolution process. Failure to comply with the terms of any sanction imposed in accordance with the rules of conduct.

(v) The repeated use of obscene or abusive language in a classroom or public meeting of the System and which, if occurring in a class is not significantly related to the teaching of the subject matter.

(w) The use of threats or violence against a faculty member or the faculty members family in order to secure preferential treatment for grades, loans, employment, or other service or privilege accorded by the System.

(x) Any act of unlawful discrimination based on race, creed, color, sex, age, sexual orientation, disability or national origin, gender identity, or genetic information, or any act of employment or educational retaliation against any person who has made a complaint about such discrimination.

(y) Any act of sexual harass-3(f)3(u)-4()3(Apd* ()T)da-8(ys)5u6d.Tc 0.tatioeed, cal him

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student and the student conduct officer are responsible for presenting his or her own information, introducing witnesses, and answering questions throughout the hearing. When a student selects an advisor, in this process the advisor has no right to speak during the hearing except to the charged student. The advisor may be an attorney. The student conduct officer has sole discretion to allow for a delay in the hearing to allow for the scheduling conflicts of an advisor.

(c) The charged student and student conduct officer shall notify the opposing party of all witnesses and provide copies of all documents and ~~in~~ writing that the party proposes to introduce as evidence at least five college working days prior to the hearing. The president shall issue subpoenas to compel the attendance of persons and the presentation of documents at all hearings established under this chapter upon the request of the person charged or of the administrative officer. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.

(d) The charged student(s) and advisors, if any, along with the student conduct officer shall be allowed to attend the entire portion of the hearing, at which information is received, excluding the time of deliberations. Admission of any other person to the student conduct hearing shall be at the discretion of the student conduct board or hearing officer.

(e) Witnesses will provide information to, and answer questions from, the student conduct board or hearing officer. The charged student and student conduct officer may suggest questions. These questions will be directed to the chairperson of the conduct board or the hearing officer, who will question the witnesses directly. The chairperson of the conduct board or the hearing officer will decide on the specific course of questioning and/or information shared at the hearing.

(h) To the extent consistent with the Family Educational Rights and Privacy Act ("FERPA") the hearing, except for deliberations, shall be taped or digitally recorded. Upon request by the student, a written transcript will be provided at the student's expense. Personally identifiable information will be removed. The record shall be the property of the institution, and will be maintained with the student's conduct records by the student conduct officer.

(i) Student conduct hearings shall be conducted in private, unless the charged student requests an open hearing. An open hearing must be held consistent with subsection (f).

(j) If a charged student, with notice, does not appear at a student conduct hearing, the information in support of the complaint shall be presented, considered, and acted upon even if the charged student is not present. Failure of the student to appear is not evidence that the student was responsible for the charge of misconduct.

(k) The hearing will proceed according to the institution's schedule and will not be delayed by another process off campus.

(l) The chairperson of the student conduct board or the hearing officer decides procedural questions.

(m) The members of the student conduct board or the hearing officer deliberates in closed session after the hearing has concluded, and shall determine whether or not the charged student has violated each section of the rules of conduct that the student is charged with having violated. This determination is made through consensus with the board. This determination is made through consensus with the board.

decision may be served by electronic mail or by first class mail with the U.S. Postal Service with delivery confirmation to the last known address of the student or by personal delivery. Service is complete upon sending of the email or depositing with the U.S. Postal Service.

10.4.7 Appeals. A student who is aggrieved by the decision of a student conduct hearing board or hearing officer may appeal to a vice president designated by the President or the President may decide to hear the appeal. The appeals shall be in writing and delivered to the student conduct officer within fourteen calendar days of the student's receipt of the decision. The student's appeal must include all written arguments in support of the appeal.

(a) Grounds for an appeal are:

(1) 0a4(s)-1(u)6(ppor)-1(t)-d.pceeeee r5nh Geeno(ay)(n)-8(f)-1(o)-4(u)2(r)-5(t) of the

process. Unless the student conduct officer otherwise states in writing, any final action resulting from a disciplinary hearing or the informal resolution process shall become part of the student's disciplinary record. Other than institutional expulsion or withholding of a degree, disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's disciplinary record. Upon graduation, the student's disciplinary record may be expunged of disciplinary actions other than residence hall expulsion, institution suspension, institution expulsion, or withholding of a degree, upon application to the student conduct officer and approval by the president. A student may request that his or her disciplinary record be expunged and any such notation be removed from the student's transcript during the student's last semester before graduation or any time following graduation. The burden demonstrating reasonable cause for considering the expunging of a disciplinary record lies with the student. In considering such requests, the institution may consider the:

- (a) Stated reason for request and circumstances surrounding request;
- (b) Date and seriousness of the violation;
- (c) Student's behavior and disciplinary record since the violation, including successful completion of any imposed sanctions;
- (d) The impact, if any, on the public that failure to give such notice may cause; and
- (e) Consequences of denying request.

The grant or denial of a request to expunge a student's disciplinary record shall rest solely within the discretion of the institution, and the enumeration of the foregoing factors shall not

(d) Probation. Probation consists of a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to have violated any institutional regulation(s) during the probationary period.

(e) Loss of Privileges. Denial of specified privileges for a designated period of time. This may include denying the student access to any campus, site, or building while permitting the student to enroll in off-campus classes such as internet or correspondence classes.

(f). Discretionary and Educational Sanctions. Participation in specific educational programs, such as alcohol or other drug educational intervention conferences, assessments, educational activities, including ~~more~~ instructional workshops, and work assignments or service to the institution or the community, and other related discretionary assignments

(g) Residence Hall Suspension. Separation of the student from the residence halls for a period of time, after which the student is eligible to return. The minimum period of suspension is one semester and the maximum period is two semesters. Conditions for readmission may be specified in the suspension.

(h) Residence Hall Permanent License Cancellation. Permanent separation of the student from the residence halls.

(i) Withholding of a degree. Prior to the awarding of a degree, the institution may withhold a degree from a student.

(j) Institutional Suspension. Exclusion for a definite period of time from attending classes and from participating in other activities of the System, as set forth in a written notice to the student. The official transcript of the student shall be marked

S', 6 & , 3 / , 1 \$ 5 < 6 8 6 3 (1 6 , 2 1 ()) (& 7 , 9 (B B B B 7 2 B B B The parents or guardians of minor students shall be notified of the action.

A student who is enrolled in his or her last semester before graduation or is not currently enrolled in the System and who was not registered during the previous semester or who graduated at the end of the previous semester may request that the notation of the disciplinary suspension be removed from the official transcript when two years have elapsed since the expiration of the student's suspension. Such request must be submitted in writing to the president or his designee. If the request is not granted, the student may, at yearly intervals thereafter, submit a request for removal of the notation.

(k) Deferred institutional Suspension. Deferred separation of the student from the institution until the close of the current semester or some other time frame for review of student progress in addressing the conduct matter.

(l) Institutional Expulsion. Termination of student registration and status for an

A student who is enrolled in his or her last semester before graduation or is not currently enrolled in the System and who was not registered during the previous semester or who graduated at the end of the previous semester may request that the notation of the disciplinary expulsion be removed from the official transcript when four years have elapsed since the expiration of the student'

The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

(b) the complainant may choose to not permit the matter to be resolved by the informal resolution process or may terminate the informal resolution process at any time prior to a written determination being signed. If sexual assault is alleged, the informal resolution process may not be used;

(c) the complainant must agree to the charge being heard by a hearing officer if the student conduct officer and student agree;

(d) the complainant must be given the opportunity to participate in any pre hearing procedures;

(e) if a hearing involving more than one charged student, the hearing officer or hearing board may require a charged student to be absent from any testimony that is not relevant to that charged student;

(f) the complainant must receive a list of all witnesses at the same time it is received by the student conduct officer and charged student;

(g) the complainant must be permitted an advisor during the hearing who shall have the same duties as the advisor for the charged student;

(h) the complainant may present witnesses and other evidence at the hearing;

(i) the

PROPOSED REVISIONS – BOARD OF REGENTS CODE

TITLE 2, Chapter 6

Additions appear in boldface italics; deletions are ~~stricken~~ and bracketed]

CHAPTER 6

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Section 6.1 Scope of the Chapter

- 6.1.1 Applicability of Procedures and Sanctions. The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against ~~members of the community faculty and for degree revocations~~ of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education Code or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions. ~~{Except as otherwise provided in this chapter, the NSHE institutions and professional schools may establish written policies, procedures and sanctions for the discipline of its students that may be used in lieu of the policies, procedures and sanctions of this chapter, including but not limited to the establishment of student judicial councils, subject to the prior review by the Chief Counsel and to the approval of the president of the institution. (B/R 1/07)}~~
- 6.1.2 Proceedings Concurrent. Action under the procedures established by this chapter shall go forward regardless of other possible or pending administrative, civil or criminal proceedings arising out of the same or other events.

Section 6.2 Cause

- 6.2.1 Prohibited Activity. The following conduct, being incompatible with the purposes of an academic community, is prohibited for all members of the faculty of the System, shall constitute cause for discipline and may lead to the procedures and disciplinary sanctions established in Section 6.3 of the Nevada System of Higher Education Code.
- (a) Failure to perform the duties for which the faculty member is employed.
 - (b) Failure to maintain a required level of performance as provided in Section 5.12 of the Nevada System of Higher Education Code.
 - (c) Incompetence or inefficiency in performing the duties for which the faculty member is employed.
 - (d) Insubordination.
 - (e) Falsification of employment applications or documents submitted to the System, its member institutions or its special units, or making other false or fraudulent representations in securing employment.
 - (f) Dishonesty.
 - (g) Conviction of any criminal act involving moral turpitude.
 - (h) Being under the influence of intoxicants, or, without a valid medical excuse, being under the influence of controlled substances as defined in the Nevada Revised Statutes, while on duty, due consideration being given to NRS 284.379.

- (i) Unauthorized absence from duty or abuse of leave privileges.
- (j) Personal or professional conduct which shows that the faculty member is unfit to remain in the faculty member's employment position or which has an ascertainable harmful or adverse effect on the efficiency of the faculty member's administrative unit.

~~[6.2.2 — Standards of Conduct . The following conduct, being incompatible with the purposes of an academic community, is prohibited for all members of the community of the System, including but not limited to the faculty and students, shall constitute cause for discipline and may lead to the procedures and disciplinary sanctions established in Section 6.3 of this chapter. Students are also subject to the prohibitions contained in this subsection under the procedures and disciplinary sanctions that may be established by the institution or professional school as authorized by Section 6.1.1 of the Nevada System of Higher Education Code. Specific acts of misconduct include, but are not limited to:]~~

- ~~([a]k)~~ Commission of any of the acts specified in Subsection 2.1.4 of the Nevada System of Higher Education Code;

- ([i]s) Making an accusation which is intentionally false or is made with reckless disregard for the truth against any member of the System community by filing a complaint or charges under this Nevada System of Higher Education Code or under any applicable established grievance procedures in the System;
- ([i]t) The repeated use of obscene or abusive language in a classroom or public meeting of the System where such usage is beyond the bounds of generally accepted good taste and which, if occurring in a class, is not significantly related to the teaching of the subject matter;
- ([i]u) Disorderly, lewd or indecent conduct occurring on System premises or at a System sponsored function on or off such premises;
- ([i]v) The use of threats of violence against a faculty member or the faculty member's family in order to secure preferential treatment for grades, loans, employment or other service or privilege accorded by the System;
- ([i]w) Any act of unlawful discrimination based on race, creed, color, sex, age, handicap or national origin or any act of employment or educational retaliation against any person who has made a complaint about such discrimination;
- ([i]x) Any act of sexual harassment when submission to a request or demand of a sexual nature is either an explicit or implicit term or condition of employment or of academic study or grading, or where verbal or physical conduct of a sexual nature has the effect of creating an intimidating, offensive or hostile f 11.04 0 0 11.04 144 418.8 Tm 4

(B/R 1/07)

~~[6.2.3 Disciplinary Actions.~~

- ~~(a) — Individuals charged with investigating or reviewing acts of misconduct at an NSHE institution or professional school must receive training approved by NSHE legal counsel.~~
- ~~(b) — Any final action resulting from a disciplinary proceeding shall become part of the student's disciplinary record.~~
- ~~(c) — In the absence of institutional or professional school policies and procedures authorized under Section 6.1.1, the provisions of this chapter apply to the investigation and resolution of charges of student misconduct.]~~

(B/R 1/07)

6.2.43 Mental or Physical Incapacity. The inability or incapacity to perform the duties for which the faculty member is employed due to mental or physical reasons may lead to suspension or termination of employment as provided in Subsections 6.3.6(b) and 6.3.7(b) of the Nevada System of Higher Education Code, due consideration being given to the provisions of NRS 284.379.

(B/R 1/07)

6.2.54 Sexual Harassment.

- (a) The Board of Regents deems the sexual harassment of students and employees to be unacceptable and prohibited.
 - 1. Because of the particularly offensive and degrading nature of sexual harassment, the danger of academic or employment retaliation for accusations of sexual harassment and the difficult and tense academic or employment environment which can result while allegations of sexual harassment are investigated or heard, it is the policy of the Board of Regents that, pending the completion of an investigation and/or disciplinary hearing into the allegations of sexual harassment, and only to the extent deemed necessary by the facts of each case, contacts between the complainant(s) and the person accused of sexual harassment shall be kept to a minimum or eliminated altogether by physical separation, assignment to other duties or classes or placement on administrative leave.
 - 2. Such action shall be deemed to be without prejudice to any person involved or determination of the truth or falsity of the allegations.
 - 3. Any such action shall be taken or maintained in such manner as to afford the least possible disruption to the day-to-day activities of the institution but the ease of reassigning students or employee subordinates in place of instructors or supervisors shall not be a

(B/R 3/93)

- (b) An alleged victim of sexual harassment shall have the opportunity to

6.3[.6]5 Suspension.

~~{(a) — For Students Only:~~

- ~~1. — Exclusion for a definite period of time from attending classes and from participating in other activities of the System, as set forth in a written notice to the student. The official transcript of the student shall be marked "DISCIPLINARY SUSPENSION EFFECTIVE _____ TO _____." Parents or legal guardians of minor students shall be notified of the action.~~
- ~~2. — A student who is enrolled in his or her last semester before graduation or is not currently enrolled in the System and who was not registered during the previous semester or who graduated at the end of the previous semester may request that the notation of the disciplinary suspension be removed from the official transcript when two years have elapsed since the expiration of the student's suspension. Such request must be submitted in writing to the president or his designee in accordance with 6.3.8. If the request is not granted, the student at yearly intervals thereafter may submit a request for removal of the notation.~~

~~(b) — For Employees Only. Exclusion from as[(or)-6(hi)3(s)-i durios OTJ ET 216(.).T .04 18t 2~~

~~[6.3.8 Expunging of Student Disciplinary Records — Records of disciplinary actions resulting in a student's suspension, expulsion, or termination shall be maintained for a period of at least six years from the date of the disciplinary action unless, pursuant to a written request, an official order to expunge a specific disciplinary record and remove from the student's transcript is issued by the President or designee as prescribed in 6.3.6 and 6.3.7.~~

~~A student may request that his or her disciplinary record be expunged and any such notation be removed from the student's transcript during the student's last semester before graduation or any time following graduation. The burden demonstrating reasonable cause for considering the expunging of a disciplinary record lies with the student. In considering such requests, the institution may consider the:~~

- ~~(a) — Stated reason for request and circumstances surrounding request;~~
- ~~(b) — Date and seriousness of the violation;~~
- ~~(c) — Student's behavior and disciplinary record since the violation, including successful completion of any imposed sanctions;~~
- ~~(d) — The impact, if any, on the public that failure to give such notice may cause; and~~
- ~~(e) — Consequences of denying request.~~

~~The grant or denial of a request to expunge a student's disciplinary record shall rest solely within the discretion of the institution, and the enumeration of the foregoing factors shall not in any way imply a duty on the institution to grant such a request by means of a balancing or other test. If a request is not granted, the student at yearly intervals thereafter may request that his or her disciplinary record be expunged. The denial of a request to expunge is not appealable.~~

~~{B/R 1/07}~~

6.3.87 Revocation of a Degree

- (a) The Board and its institutions reserve the right to withdraw academic degrees in the event that a case is brought after graduation for material academic misconduct that impacts the reputation of the institution, including misrepresentation of academic credentials or material falsification in an application, if the act occurred before graduation and during the time the student applied to, or was enrolled at an NSHE institution, but a complaint had not been filed prior to graduation. Institutions who are investigating acts of misconduct prior to a student graduating may postpone the awarding of a degree pending the outcome of the investigation and imposing of appropriate disciplinary sanctions.

6.5.5 Administrative Leave With Pay . Administrative leave under this section shall be with pay and other benefits. (B/R 5/92)

Section 6.6 Disciplinary Sanctions [~~for Professional Employees~~]

6.6.1 Authority of Administrators to Discipline . Vice presidents, deans, directors and persons in equivalent positions shall have the authority to issue reprimands or warnings (as defined under 6.3.1 and 6.3.2) to faculty members and other professional employees under procedures stated in 6.6 of the NSHE Code. Procedures under 6.6 differ from procedures established in Sections 6.7 to 6.14 of the NSHE Code. Code 6.6 procedures are to be used whenever possible, as an alternative to those in 6.7 to 6.14. (B/R 06/99)

6.6.2 Right to Notice . Before issuing a warning or reprimand, a person proposing to issue the disciplinary sanction shall notify the person whom it is proposed to so discipline in writing of the charges involved. The notice shall also schedule a meeting between the person charged and the person proposing to issue the disciplinary sanction for the purpose of discussing the charges. At least fifteen (15) working days before issuing a warning or reprimand, the vice president or dean, director or persons in equivalent positions proposing to issue the disciplinary sanction shall notify the affected person in writing of the charges involved and the proposed action. The notice shall:

1. Include all materials and documentation to support the charges;
2. Clearly state that it activates the processes set forth in 6.6 of the NSHE Code, and also state the alternatives available under 6.6.3 to the affected person; and
3. Advise the affected person of his or her rights according to 6.6.6.

After the person proposing the disciplinary action has sent the notification, ten (10) working days must elapse before section 6.6.3 is implemented, during which time no documentation of the proposed action may be placed in the affected person's personnel file. (B/R 06/99)

6.6.3 Choice of Response. The person affected by the proposed disciplinary action shall have:

1. the right to mediation as outlined in 6.6.4, or through 6.6.8.
2. the right to accept the reprimand or warning or to respond, in writing to the warning or reprimand and to have that response immediately placed in his or her personnel file.
3. The right to grieve the warning or reprimand unless mediation is selected. If the affected person elects to grieve the warning or reprimand, mediation may not be used.

(f)

6.9.2 Hearing Arrangements. The administrative officer shall make physical and scheduling arrangements for hearings required by Sections 6.9 through 6.11 of the Nevada System of Higher Education Code.
(B/R 4/08)

6.9.3 Notice.

- (a) The person charged must receive, at least 10 college working days before the hearing, written notice from the administrative officer containing:
1. The date, time and place of the hearing;
 2. Specification of the misconduct charged by citing the applicable provision of the Nevada System of Higher Education Code or the applicable stated policy, prohibition, procedure, rule, regulation or bylaw of a System institution which has been alleged to have been violated;
 3. Specification, to the extent reasonably possible, of the time, place, person or persons involved and the circumstances of the alleged prohibited conduct, including the name or names of persons who may have witnessed the alleged prohibited conduct;
 4. Notification that the person charged may be accompanied by an advisor of the charged person's choice, and of the time within which the person charged must inform the administrative officer of the name and address of the advisor, if any, and whether the advisor is an attorney, or else forfeit the right to have an advisor present, as provided in Subsection 6.9.6 of the Nevada System of Higher Education Code; and
 5. Such other information as the administrative officer may wish to include.
- (b) The administrative officer shall be responsible for preparing and delivering notices required by this section. [~~Notices shall be either personally delivered to the person charged or shall be sent to the person charged by certified or registered mail, return receipt requested.~~] **All notices or other documents shall be (1) served by 1st class mail, postage prepaid, and by email, if a current email address is available to the institution; or (2) hand delivered.** Notice delivered by mail shall be considered delivered when sent, provided that 3 additional college working days shall be added to the time period set forth for minimum notice. A copy of the applicable disciplinary hearing procedures shall accompany each notice.

6.9.4 Evidence.

Evidence shall be admitted if it possesses reasonably probative value, materiality and relevancy. No evidence other than that received at the hearing shall be considered in the decision. Upon request, the person charged, the person's

6.9.9 Consolidated Hearings .

- (a) When more than one person is charged with prohibited conduct arising out of a single occurrence, or out of multiple occurrences, a single hearing may be held for all of the persons so charged. Such persons may request that their cases be consolidated with others or separated from others. The administrative officer shall make determinations regarding consolidation. All such determinations shall be subject to revision by the general hearing officer, institutional hearing committee or special hearing officer, as the case may be. In the event of such revision, all cases affected shall be rescheduled for hearing.
- (b) The separation of one or more cases from a group of cases previously set for a consolidated hearing shall not be considered to affect the consolidation of the remaining cases in the group.

6.9.10 Absence of the Person Charged . If the person charged does not appear, either personally or through an advisor, at a hearing without satisfactory explanation for the absence having been made at the earliest opportunity, or should the person charged leave the hearing before its conclusion, the hearing shall proceed without the person charged and the general hearing officer, institutional hearing committee or the special hearing officer and special hearing committee, as the case may be, shall make findings of fact, recommendations or a report, as the case may be, on the available evidence. The fact that an administrative hearing or a civil or criminal trial for the person charged is pending shall not be considered a satisfactory explanation for absence unless the actual hearing or trial date conflicts with a date for a hearing held under this chapter, or unless it is physically impossible for the person charged, through no fault of that person, to attend a hearing held under this chapter.

6.9.11 Subpoena . The president shall issue subpoenas to compel the attendance of persons and the presentation of documents at all hearings established under this chapter upon the request of the person charged or of the administrative officer. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.

6.9.12 Waiver or Extension of Time .

- (a) Matters preliminary to hearings shall be decided, hearings conducted and cases determined under these procedures as quickly as is reasonably feasible, consistent with reasonable notice.
- (b) With the approval of the administrative officer only, a person charged may waive all time limits established in this chapter, except the time limits stated in Subsections 6.10.2 and 6.11.7 of the Nevada System of Higher Education Code.
- (c) Extension of time for hearings shall be authorized by general hearing officers, institutional hearing committee chairs or special hearing officers only upon good and compelling reasons. The possibility or pendency of administrative, civil or criminal proceedings against the person charged is not such a good and compelling reason for extension of time unless the

persons from among the faculty hearing panel, the selection to be made by lot, to serve on a special hearing committee and the faculty senate chair, within the above-referenced time period, shall inform the person charged and the administrative officer of the names of the persons selected. (B/R 8/92)

- (c) If a hearing is to be held on a charge or charges of sexual harassment under Subsection 6.2.~~(p)~~ of the Nevada System of Higher Education Code and if a student or graduate student is involved in the charge as an alleged victim, within 5 college working days after receipt of notice of the president's decision to hold a hearing under Section 6.8.3 of the Nevada System of Higher Education Code, the faculty senate chair shall select the names of eight persons from among the faculty hearing panel, the selection to be made by lot, and the appropriate student government president shall nominate three students, to serve on a special hearing committee and the faculty senate chair and the appropriate student government president, within the above-referenced time period, shall inform the person charged and the administrative officer of the names of the persons selected or nominated.

(B/R 4/08)

6.11.4 Duties of the Special Hearing Committee . The function of the special hearing committee shall be:

- (a) Together with the special hearing officer, to hear evidence presented at a hearing held under this chapter during which the committee members may also question witnesses; and
- (b) To make recommendations, after reviewing the report of the special hearing officer, to the president at the conclusion of a hearing for dismissal of charges or imposition of a sanction or sanctions. Such recommendations shall be in writing and shall be made by the committee within a reasonable time after reviewing the special hearing officer's report with copies sent to the person charged and the administrative officer. The full range of sanctions established by Section 6.3 of the Nevada System of Higher Education Code is available.

6.11.5 Hearings to be Recorded . A tape recording will be made of the hearing and kept in the president's office for at least one year before being destroyed, unless the matter is brought before the courts during which time the recording will be kept until the matter is decided in the courts. Except as provided herein or for purposes of appeal, a tape recording of a closed hearing shall be confidential. The person charged, on request of and at the charged person's expense may have or, under supervision may make, a copy of such recording. No tape recording by the person charged or by other persons at the hearing will be permitted. The person charged may, at the charged person's expense, provide for a certified court reporter. A copy of the court reporter's transcript shall also be made available to the president upon the president's request and at the System institution's expense.

6.11.6 Challenges .

- (a) Within 7 college working days after the faculty senate chair, and the appropriate student government president under Subsection 6.11.3(c) of the Nevada System of Higher Education Code, has informed the person charged and the administrative officer of the identities of the persons selected from the faculty hearing panel or nominated by the student government president, the administrative officer and the person charged or the adviser of the person charged shall meet in person or by telephone to exercise, in alternate order, the peremptory challenges provided in subparagraph (c) of this subsection. The person charged or the adviser shall exercise the first peremptory challenge. Peremptory challenges not exercised at this time shall be waived. At this time, the person charged or the adviser shall also submit written challenges for cause, as provided in subparagraph (b) of this subsection. No challenge for cause may be exercised after this date.
- (b) The person charged may challenge the special hearing officer or the members of the special hearing committee for cause for the following reasons: (B/R 5/92)
1. The person challenged was a participant in the event out of which the alleged prohibited conduct arose; or
 2. The person challenged bears a relationship to some party to the proceedings which may prejudice the charged person's ability to obtain a fair and impartial hearing and decision.

The person charged shall submit a written statement setting forth the allegations underlying the challenge to the administrative officer. The administrative officer shall send the written challenge to the president the same day it is received, with a copy to the person challenged. Within 7 college working days after receipt of the written challenge, the president or the president's designee shall determine whether the facts present grounds for disqualification. The decision of the president shall be final. A hearing shall not be held until the challenge is decided by the president. The special hearing officer or special hearing committee members may be disqualified on their own motions. (B/R 5/92)

- (c) The administrative officer and the person charged each shall have the right to challenge: (B/R 8/92)
1. In the case of a hearing to be held to hear a charge of sexual harassment under Subsection 6.2.2(p) of the Nevada System of Higher Education Code in which a student or graduate student is an alleged victim, no more than two members of the faculty hearing panel selected by lot and no more than one student government nominee without cause; (B/R 8/92)
 2. In all other cases, no more than two members of the faculty hearing panel selected by lot without cause. (B/R 8/92)
- (d) In cases of consolidated hearings, the persons charged shall be limited to a total of the number of challenges without cause appropriate under either subparagraph (c)(1) or (c)(2) above. (B/R 8/92)

and the person charged or the adviser of the person charged meet to exercise peremptory challenges and to transmit challenges for cause.

- (g) The same day that challenges for cause are received by the administrative hearing officer, the administrative hearing officer shall send such challenges to the president.
- (h) Within 7 college working days after receipt of challenges with cause, the president shall make a decision on the challenges.
- (i) Within 3 college working days after the president's decision on challenges for cause, vacancies in the appointments of special hearing officer or members of a special hearing committee shall be filled.
- (j) Within six months after the filing of the complaint with the administrative officer, the hearing shall be held and a recommendation made to the president for action.

(B/R 1/07)

Section 6. 12 President's Decision

6.12.1 Options Available . The president shall review the findings of fact and recommendations of the general hearing officer or the institutional hearing committee or, in cases heard before a special hearing officer and special hearing committee, the report of the special hearing officer and the recommendations of the special hearing committee. The president may:

- (a) Dismiss the charge;
- (b) Affirm the recommended sanction;
- (c) Impose a lesser sanction than recommended;
- (d) Impose a greater sanction than recommended; or
- (e) Order a new hearing.

6.12.2 Decision and Notification . The president shall reach a written decision within a reasonable time after receipt of findings of fact and recommendations from the general hearing officer or institutional hearing committee or after receipt of reports and recommendations from the special hearing officer and the special hearing committee. The president shall notify the person charged and the administrative officer of the decision. If the action taken is reduction in pay, suspension, expulsion or termination, the person charged shall either be notified by personal delivery of the decision or shall be notified by certified or registered mail, return receipt requested. ~~[If a minor student is suspended or expelled, the minor's parents or legal guardian shall be notified of the action by certified or registered mail, return receipt requested, sent to the parents' or legal guardian's last known address posted on the records of the registrar of the member institution involved.]~~ If there is no appeal, the president's decision is final.

(B/R 1/07)

Section 6.13 Appeals

6.13.1 Requirements for Appeals

- (a) Appeals from the decision of the president must be filed by the person charged within 10 college working days of the receipt of the decision. The appeal must be in writing and shall be directed to the administrative officer.
- (b) The facts set forth in the appeal must reasonably establish that:
 - 1. The procedures under which the person was charged are invalid or were not followed;
 - 2. The person charged did not have adequate opportunity to prepare and present a defense to the charges;
 - 3. The evidence presented at the hearing was not substantial enough to justify the decision; or
 - 4. The sanction imposed was not in keeping with the gravity of the violation.

6.13.2 Decision on Appeal

- (a) Within 7 college working days after receipt, the administrative officer shall direct the appeal, together with any reply the administrative officer deems necessary provided a copy of the reply is sent to the person charged, to:
 - 1. The president for reconsideration when the sanction imposed is suspension or reduction in pay or a lesser sanction.
 - 2. To the Board of Regents for action when the sanction imposed is expulsion or termination.
- (b) A decision on the appeal shall be made within a reasonable time after receipt of the appeal by the president or within a reasonable time after the next Board of Regents meeting during which the appeal was considered. For applicable appeals, the appeal shall be placed on the meeting agenda of the Board of Regents as soon as is legally possible under Nevada law after receipt of the appeal. The president or the Board of Regents, as the case may be, shall give notification of the decision in the same manner as is provided in Subsection 6.12.2 of the Nevada System of Higher Education Code.
- (c) The president or the chair of the Board of Regents, as the case may be, may request a personal appearance of the person charged if the president or the chair of the Board of Regents, as the case may be, is of the opinion that justice will be served by such appearance. The appearance of the person charged shall be limited to the issues raised by the appeal as provided in Subsection 6.13.1 of the Nevada System of Higher Education Code. The person charged must be informed that an

PROPOSED REVISIONS – BOARD OF REGENTS HANDBOOK

TITLE 4, amendments to Chapter 1, Section 22; Chapter 8, Section 13, Chapter 20
(to conform references to new Chapter 10)

~~stricken~~ and bracketed]

Title 4, Chapter 1

Section 22 Computer Resources Policy

- 3. Privacy Issues: The NSHE provides security measures to protect the integrity and privacy of electronic information such as administrative data, individual data, personal files, and electronic mail. All FERPA (Family Educational Rights and Privacy Act) requirements are followed. Users must not circumvent security measures. While computing resources are System property and all rights are retained regarding them, these rights will be balanced with a reasonable and legitimate expectation that technical staff and administrators will not casually or routinely monitor traffic content or search files. The content of files shall only be examined when there is a reasonable suspicion of wrongdoing or computer misconduct as determined by the institution President or his or her designee. Examination of files shall be limited to the matter under consideration. Disciplinary matters involving computer and network systems shall be handled in accordance with Chapter 6 **or Chapter 10** of the NSHE Code. Within the limits of the capability of the computer system, NSHE shall protect the legitimate privacy interests of users and those about whom information is stored.

Title 4, Chapter 8

Section 13 Policy Against Discrimination and Sexual Harassment; Complaint Procedure

INTRODUCTION

Additions appear in **boldface italics**; deletions are [bracketed]. This Policy is divided into three parts. Section A states the NSHE policy against discrimination. Section B states the NSHE policy against sexual harassment. Section C contains the complaint and investigation procedure for discrimination and sexual harassment complaints. These procedures are in addition to disciplinary complaints brought against professional employees or students under Title 2, Chapter 6 **or Chapter 10** of the NSHE Code (or if applicable, institution student codes of conduct), or against classified employees under the Nevada Administrative Code. However, information gathered as part of the complaint process under this section may be used in connection with disciplinary proceedings.

...

C. Complaint and Investigation Procedure.

...

4. Investigation and Resolution.

- (c) After the recommendation has been made, a determination will be made by appropriate management regarding the resolution of the matter. If warranted, disciplinary action up to and including involuntary termination or expulsion will be taken. Any such disciplinary action

